

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JUNE 20, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 412

Introduced by Senator Figueroa

February 17, 2005

An act to add and repeal Chapter 10.5 (commencing with Section 4600) to Division 2 of the Business and Professions Code, relating to massage therapy.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Figueroa. Massage therapy.

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, chiropractors, physical therapists, and acupuncturists. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.

This bill would provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization, which would be a nonprofit organization that meets specified requirements. The bill would require applicants for certification as massage practitioners or massage therapists to be 18 years of age or older, to meet specified educational criteria, to provide fingerprints for submission to the Department of Justice for a criminal background check, and to pay fees required by the organization. The bill would allow the organization to take certain disciplinary action against certificate holders and the violation of specified provisions would be a misdemeanor. The bill would prohibit a city, county, or other local

government from enacting an ordinance regulating the practice of massage by a certificate holder. The bill would make the Massage Therapy Organization subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would require the organization to provide the committee with a related report by September 1, 2008. The bill would repeal these provisions on January 1, 2010.

Because this bill would make the violation of specified provisions a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 10.5 (commencing with Section 4600)
2 is added to Division 2 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 10.5. MASSAGE THERAPISTS

6
7 4600. As used in this chapter, the following terms shall have
8 the following meanings:

9 (a) "Approved school" or "approved massage school" means a
10 facility that meets minimum standards for training and
11 curriculum in massage and related subjects and that is approved
12 by the Bureau For Private Postsecondary And Vocational
13 Education pursuant to Section 94915 of the Education Code, by
14 an institution accredited pursuant to paragraph (7) of subdivision
15 (b) of Section 94739 of the Education Code, by colleges or
16 universities of the state higher education system as defined in
17 Section 100850 of the Education Code, or by a school of equal or
18 greater training that is approved by the corresponding agency in
19 another state or accredited by an agency recognized by the
20 United States Department of Education.

1 (b) “Compensation” means the payment, loan, advance,
2 donation, contribution, deposit, or gift of money or anything of
3 value.

4 (c) “Massage” means the application of a system of structured
5 touch, pressure, movement, and holding to the soft tissues of the
6 human body with the intent to enhance or restore the health and
7 well-being of the client. The practice includes the external
8 application of water, heat, cold, lubricants, salt scrubs, or other
9 topical preparations; use of devices that mimic or enhance the
10 actions of the hands; and determination of whether massage
11 therapy is appropriate or contraindicated, or whether referral to
12 another health care practitioner is appropriate. For purposes of
13 this chapter, massage and bodywork are interchangeable.

14 (d) “Massage therapist,” “bodyworker,” “bodywork therapist,”
15 or “massage and bodywork therapist” means a person who is
16 certified by the Massage Therapy Organization under subdivision
17 (c) of Section 4601 and who administers massage for
18 compensation.

19 (e) “Massage practitioner,” “bodywork practitioner,” or
20 “massage and bodywork practitioner” means a person who is
21 certified by the Massage Therapy Organization under subdivision
22 (b) of Section 4601 and who administers massage for
23 compensation.

24 (f) “Organization” means the Massage Therapy Organization
25 created pursuant to this chapter, which shall be a nonprofit
26 organization, exempt from taxation under paragraph (3) of
27 subsection (c) of Section 501 of Title 26 of the United States
28 Code. The organization may commence activities as authorized
29 by this section once it has submitted a request to the Internal
30 Revenue Service seeking this exemption.

31 (g) “Registered school” means a facility that meets minimum
32 standards for training and curriculum in massage and related
33 subjects that is recognized by the Bureau For Private
34 Postsecondary And Vocational Education pursuant to Section
35 94931 of the Education Code, by an institution accredited by the
36 senior commission or the junior commission of the Western
37 Association of Schools and Colleges as defined in paragraph (7)
38 of subdivision (b) of Section 94739 of the Education Code, by
39 colleges and universities of the state higher education system as
40 defined in Section 100850 of the Education Code, or by a school

1 of equal or greater training that is approved by the corresponding
2 agency in another state.

3 4600.5. (a) A Massage Therapy Organization, as defined in
4 subdivision (f) of Section 4600, shall be created and shall have
5 the responsibilities and duties set forth in this chapter. The
6 organization may take any reasonable actions, including hiring
7 staff or entering into contracts, to carry out the responsibilities
8 and duties set forth in this chapter.

9 (b) (1) The organization shall be governed by a board of
10 directors made up of at least ~~one~~ *representative two*
11 *representatives* from each professional society, association, or
12 other entity, whose membership is comprised of massage
13 therapists, that chooses to participate in the organization. To
14 qualify, a professional society, association, or other entity must
15 have a membership in California of at least 1,000 individuals for
16 the last three years, and have bylaws that require its members to
17 comply with a code of ethics. In addition, the board of directors
18 shall include a person selected by the League of California Cities,
19 a person selected by the California State Association of Counties,
20 and a person selected by the Bureau Chief of the Bureau for
21 Private Postsecondary Vocational Education, unless these entities
22 choose not to exercise this right of selection. The organization's
23 bylaws shall establish a process by which any other directors
24 may be selected.

25 (2) The initial board of directors shall establish the
26 organization, initiate the request for tax-exempt status from the
27 Internal Revenue Service, and solicit input from the massage
28 community concerning the operations of the organization. The
29 initial board of directors, in its discretion, may immediately
30 undertake to issue the certificates authorized by this chapter after
31 adopting the necessary bylaws or other rules, or may establish by
32 adoption of bylaws the permanent governing structure prior to
33 issuing certificates.

34 (c) *The board of directors shall establish fees reasonably*
35 *related to the cost of providing services and carrying out its*
36 *ongoing responsibilities and duties. Initial and renewal fees shall*
37 *be established by the board of directors annually.*

38 4601. (a) The organization shall issue a certificate to an
39 applicant who satisfies the requirements of this chapter.

(b) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours, that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(3) All fees required by the organization have been paid.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from programs that satisfy the criteria established in paragraph (2) of subdivision (b). The remaining 250 hours required may be secured either from these programs, from registered schools, or from approved continuing education providers.

(B) The applicant has passed ~~a certification exam~~ *an examination* that has been approved by the organization.

(3) All fees required by the organization have been paid.

(d) The organization shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The organization shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist or massage practitioner certificate shall file with the organization a written application provided by the organization, showing to the

1 satisfaction of the organization that he or she meets all of the
2 requirements of this chapter.

3 (f) Any certification issued under this chapter shall be subject
4 to renewal in a manner prescribed by the organization and shall
5 expire unless renewed in that manner. The organization may
6 provide for the late renewal of a license.

7 4601.5. (a) Prior to issuing a certificate to the applicant, the
8 organization shall require the applicant to submit fingerprint
9 images in a form consistent with the requirements of this section.
10 The organization shall submit the fingerprint images and related
11 information to the Department of Justice for the purpose of
12 obtaining information as to the existence and nature of a record
13 of state and federal level convictions and of state and federal
14 level arrests for which the Department of Justice establishes that
15 the applicant was released on bail or on his or her own
16 recognizance pending trial. Requests for federal level criminal
17 offender record information received by the Department of
18 Justice pursuant to this section shall be forwarded to the Federal
19 Bureau of Investigation by the Department of Justice.

20 (b) Pursuant to subdivision (p) of Section 11105 of the Penal
21 Code, the Department of Justice shall provide the following
22 information to the organization:

23 (1) Every conviction rendered against the applicant.

24 (2) Every arrest for an offense for which the applicant is
25 presently awaiting trial, whether the applicant is incarcerated or
26 has been released on bail or on his or her own recognizance
27 pending trial.

28 (c) The Department of Justice and the organization shall
29 charge a fee sufficient to cover the cost of processing the request
30 for state and federal level criminal offender record information.

31 (d) Fingerprint images and related information submitted
32 pursuant to this section include fingerprint images and related
33 information that is transmitted electronically.

34 (e) The organization shall request subsequent arrest
35 notification service from the Department of Justice, as provided
36 under Section 11105.2 of the Penal Code, for all applicants for
37 licensure for whom fingerprint images and related information
38 are submitted to conduct a search for state and federal level
39 criminal offender record information.

1 4602. (a) The organization may discipline a certificate holder
2 by any, or a combination, of the following methods:

- 3 (1) Placing the certificate holder on probation.
- 4 (2) Suspending the certificate and the rights conferred by this
5 chapter on a certificate holder for a period not to exceed one
6 year.
- 7 (3) Revoking the certificate.
- 8 (4) Suspending or staying the disciplinary order, or portions of
9 it, with or without conditions.
- 10 (5) Taking other action as the organization, as authorized by
11 this chapter or its bylaws, deems proper.

12 (b) The organization may issue an initial certificate on
13 probation, with specific terms and conditions, to any applicant.

14 4603. It is a violation of this chapter for a certificate holder to
15 commit, and the organization may deny an application for a
16 certificate or discipline a certificate holder for, any of the
17 following:

18 (a) Unprofessional conduct, including, but not limited to, the
19 following:

20 (1) Incompetence or gross negligence in carrying out usual
21 massage or massage therapy functions.

22 (2) Repeated similar negligent acts in carrying out usual
23 massage or massage therapy functions.

24 (3) Denial of licensure, revocation, suspension, restriction, or
25 any other disciplinary action against a certificate holder by
26 another state or territory of the United States, by any other
27 government agency, or by another California health care
28 professional licensing board. A certified copy of the decision,
29 order, or judgment shall be conclusive evidence of these actions.

30 (b) Procuring a certificate by fraud, misrepresentation, or
31 mistake.

32 (c) Violating or attempting to violate, directly or indirectly, or
33 assisting in or abetting the violation of, or conspiring to violate,
34 any provision or term of this chapter or any rule or bylaw
35 adopted by the organization.

36 (d) Conviction of any felony, or conviction of a misdemeanor
37 that is substantially related to the qualifications, functions, or
38 duties of a certificate holder, in which event the record of the
39 conviction shall be conclusive evidence of the crime.

1 (e) Impersonating an applicant or acting as a proxy for an
2 applicant in any examination referred to under this chapter for
3 the issuance of a certificate.

4 (f) Impersonating a certified practitioner or therapist, or
5 permitting or allowing an uncertified person to use a certificate.

6 (g) Committing any fraudulent, dishonest, or corrupt act that is
7 substantially related to the qualifications, functions, or duties of a
8 certificate holder.

9 (h) Committing any act punishable as a sexually related crime.

10 4604. (a) Notwithstanding Section 4601, the organization
11 may grant a massage practitioner certificate to any person who
12 applies on or before January 1, 2008, with one of the following:

13 (1) Both of the following:

14 (A) A current valid massage permit or license from a
15 California city or county.

16 (B) Documentation evidencing that the person has completed
17 at least a 100-hour course in massage at a state-approved or
18 registered school, or out-of-state school recognized by the
19 organization as providing comparable education, and has
20 provided at least 250 hours of massage to members of the public
21 for compensation each year for the past five years.

22 (2) Documentation evidencing that the person has completed
23 at least a 100-hour course in massage at a state-approved or
24 registered school, or out-of-state school recognized by the
25 organization as providing comparable education, and has
26 provided, prior to the effective date of the law, at least ~~500~~ 400
27 hours of massage to members of the public for compensation
28 each year for the past 5 years. For purposes of this subdivision,
29 evidence of practice shall include either of the following:

30 (A) A W-2 form or employer's affidavit containing the dates
31 of the applicant's employment.

32 (B) Tax returns indicating self-employment as a massage
33 practitioner or massage therapist or any other title that may
34 demonstrate experience in the field of massage.

35 (3) Documentation evidencing that the person holds a current
36 valid certificate of authorization as an instructor at a
37 BPPVE-approved massage school, or holds the position of a
38 massage instructor at a school accredited by an agency
39 recognized by the United States Department of Education, or

1 colleges and universities of the state higher education system, as
2 defined in Section 100850 of the Education Code.

3 (b) After reviewing the information submitted under
4 subdivision (a), the organization may require additional
5 information necessary to enable it to determine whether to issue
6 a certificate.

7 (c) (1) A person who meets the educational requirements of
8 either paragraph (1) or (2) of subdivision (a), but who has not
9 practiced for five years prior to submitting an application
10 pursuant to this section, may apply for a conditional certificate.

11 (2) An applicant for a conditional certificate shall be required
12 to complete 30 hours of additional education from schools or
13 courses described in paragraph (5) for each year that the person is
14 unable to establish the practice experience required by paragraph
15 (1) or (2) of subdivision (a). *The applicant's total education shall*
16 *not exceed 250 hours.* The additional educational requirements
17 provided by this subdivision shall be completed within a time
18 period based on one year for each 30 hours of education required.

19 (3) Upon successful completion of the requirements of this
20 subdivision, the organization shall issue a certificate to the
21 person that is not conditional.

22 (4) The organization shall immediately revoke the conditional
23 certificate issued to any person pursuant to this subdivision if the
24 time period specified in paragraph (2) expires without proof of
25 completion of the requirements having been filed with the
26 organization.

27 (5) Any additional education required by this section may be
28 completed through courses provided by any of the following:

29 (A) Approved schools, as defined in subdivision (a) of Section
30 4600.

31 (B) Registered schools, as defined in subdivision (g) of
32 Section 4600.

33 (C) A provider approved by the National Certification Board
34 for Therapeutic Massage and Bodywork (NCBTMB).

35 (D) A provider that establishes to the satisfaction of the
36 organization that its course or courses are appropriate educational
37 programs for this purpose.

38 (d) Nothing in this section shall preclude the organization
39 from exercising any power or authority conferred by this chapter
40 with respect to a conditional certificate holder.

1 4605. It is an unfair business practice for any certified
2 massage therapist or certified massage practitioner to state or
3 advertise or put out any sign or card or other device, or to
4 represent to the public through any print or electronic media, that
5 he or she is state certified, registered, or licensed by a
6 governmental agency to perform the functions of a massage
7 therapist or massage practitioner.

8 4610. (a) It is an unfair business practice for any person to
9 hold oneself out or use the title of “certified massage therapist”
10 or “certified massage practitioner” or any other term that implies
11 or suggests that the person is certified as a massage therapist or
12 practitioner without meeting the requirements of Section 4601.

13 (b) Any person who holds himself or herself out or uses the
14 title of “certified massage therapist” or “certified massage
15 practitioner” or any other term that implies or suggests that the
16 person is certified as a massage therapist or practitioner, without
17 possessing a valid certificate issued pursuant to this chapter, is
18 guilty of a misdemeanor punishable by up to 90 days in *a* county
19 jail, a fine of fifty dollars (\$50) for the first violation, one
20 hundred dollars (\$100) for the second violation, and two hundred
21 dollars (\$200) for the third and subsequent violations, or *by* both
22 that imprisonment and fine.

23 4611. The superior court in and for the county in which any
24 person acts as a massage practitioner or massage therapist in
25 violation of the provisions of this chapter, may, upon a petition
26 by any person, issue an injunction or other appropriate order
27 restraining the conduct. The proceedings under this paragraph
28 shall be governed by Chapter 3 (commencing with Section 525)
29 of Title 7 of Part 2 of the Code of Civil Procedure.

30 4612. (a) A city, county, or other political jurisdiction within
31 the state shall not enact an ordinance that regulates the practice of
32 massage, as defined in this chapter, by an individual who is
33 certified under this chapter. No provision of any ordinance
34 enacted by a city, county, or other political jurisdiction that is in
35 effect before the effective date of this chapter, and that relates to
36 the practice of massage, may be enforced against a person who is
37 issued a certificate under this chapter.

38 (b) Nothing in this chapter shall be interpreted to prevent any
39 local jurisdiction from adopting or enforcing any local ordinance
40 that is not in conflict with any provision of this chapter, as long

1 as it does not conflict with subdivision (a). Nothing in this
2 chapter shall preclude application of any local ordinance with
3 respect to a person certified pursuant to this chapter where that
4 ordinance is equally applied to any person operating any other
5 lawful business within the local jurisdiction.

6 4615. (a) This chapter shall be subject to the review required
7 by Division 1.2 (commencing with Section 473).

8 (b) The Massage Therapy Organization shall provide to the
9 Joint Committee on Boards, Commissions, and Consumer
10 Protection by September 1, 2008, a report as required by Section
11 473.2.

12 4620. This chapter shall remain in effect only until January 1,
13 2010, and as of that date is repealed, unless a later enacted
14 statute, that is enacted before January 1, 2010, deletes or extends
15 that date.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the
21 penalty for a crime or infraction, within the meaning of Section
22 17556 of the Government Code, or changes the definition of a
23 crime within the meaning of Section 6 of Article XIII B of the
24 California Constitution.